

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

BRIAN KOPATZ

Plaintiff

V.

**LORIE DAVIS, DIRECTOR, TDCJ-CID,
ET AL.**

Defendants

Case No. 5:21cv19

ORDER OF DISMISSAL

Plaintiff Brian Kopatz, proceeding *pro se*, filed the above-styled and numbered civil action complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge in accordance with 28 U.S.C. § 636.

Plaintiff was ordered to pay the statutory filing fee or to submit a certified inmate trust account data sheet in support of his application for leave to proceed *in forma pauperis*. He sought and was granted an extension of time to do so. By separate order, Plaintiff was directed to file an amended complaint. When he did not comply with these orders, the Magistrate Judge issued a Report recommending dismissal of the lawsuit for failure to prosecute or to obey an order of the Court.

Plaintiff received a copy of the Report on June 18, 2021, but has not filed objections. Instead, on August 4, 2021, he filed his amended complaint. This amended complaint asserts that prison officials are lying on his inmate trust account statement, but to date Plaintiff has not furnished a copy of the statement to the Court as directed. He says he is trying to have his father call Huntsville about the alleged lying, but provides no other justification for his failure to comply with the Court's order.

Because no objections have been received, the Plaintiff is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions

accepted and adopted by the District Court. *Duarte v. City of Lewisville, Texas*, 858 F.3d 348, 352 (5th Cir. 2017).

The Court has reviewed the pleadings in this case and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S. Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.")

Even if the allegations in Plaintiff's amended complaint concerning his inmate trust account data sheet in his amended complaint were liberally construed as objections, triggering *de novo* review of the Magistrate Judge's Report, he has shown no basis upon which to reject this Report. He was ordered to pay the statutory filing fee or furnish a certified *in forma pauperis* data sheet, and he failed to do so despite receiving an extension of time. His subjective belief that prison officials are "lying" does not justify his failure to comply with the Court's order, and the Magistrate Judge properly recommended dismissal of the lawsuit without prejudice. It is accordingly

ORDERED that the Report of the Magistrate Judge (Docket No. 15) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 19th day of August, 2021.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE